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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 1123 of 2005
Date of decision: 27.11.2007

Gurcharan Singh and another **...Appellants**

Versus

Bhag Singh and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D.K.Kaushal, Advocate for the appellants.

Mr. P.L.Singla, Advocate for respondents.

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RAJESH BINDAL, J.

The plaintiffs are in second appeal before this Court against concurrent findings of fact by both the Courts below whereby suit filed by them for permanent injunction restraining the respondents/defendants from encroaching upon any portion of the street thereby causing obstruction in the peaceful enjoyment by the appellants/plaintiffs and from raising any sort of construction thereon was dismissed. The parties in the present suit are real brothers.

The claim made in the suit was that respondents/defendants were encroaching upon the public street to the extent of 4 fts. which needed to be checked. Disputing the claim made by the appellants/plaintiffs the stand of the respondents/defendants was that defendant no.1 is in possession of the land, which was handed over to him by the Bailiff of the Court in execution of a decree of possession by way of specific performance passed in his favour. Learned trial Court on appreciation of evidence brought on record by both the parties opined that none of the witnesses produced by the appellants stated that respondents/defendants were threatening to raise construction or encroach upon the street in dispute and further that respondent no. 1/defendant no. 1 had been delivered possession of the land in dispute in execution of a decree passed in his favour in a suit for specific performance. Present suit was filed only after the Bailiff had

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got the possession of the suit land delivered to respondent no.1/defendant no.1. It has been noticed that the alleged 4 fts. strip of the street was infact subject matter of the sale deed executed in favour of respondent no.1/defendant no.1 in terms of which decree passed in his favour. Once that is so, I do not find any illegality has been committed by the Courts below in dismissing the suit filed by the appellants.

While concurring with the findings recorded in the impugned judgment and decree, I do not find any substantial question of law arises in the present appeal and the same is dismissed.

November 27, 2007 **(Rajesh Bindal)**
Pka **Judge**